ASSAULT ON MR. SUMNER.

SPEECH

OF

HON. T. S. BOCOCK, OF VIRGINIA,

DELIVERED

IN THE HOUSE OF REPRESENTATIVES, JUNE 11, 1856.

The House having under consideration the report of the Committee on the alleged assault of the Hon. PRESTON S. BROOKS on the Hon. CHARLES SUMNER, of the Senate,

Mr. BOCOCK said: I rise to address the House upon this question, at this time, with unfeigned feelings of diffidence and reluctance. I regret that it falls to my lot to come forward to speak after the question has been debated by so many distinguished gentlemen upon both sides of the question—and gentlemen, I may say, distinguished not more for their learning, their eloquence, and their ability, than by their tact and success in always obtaining the floor exactly at the most interesting period of every debate, leaving it to such humble members as myself, at a later period, to gather up the fragments left, and to tread the paths already worn smooth by them.

Under these circumstances I do not know that I should have said one word upon this question at this time but for a personal consideration, which will be appreciated by all, and which made it appear to me proper that something should be said by some member from the State which I have the honor, in part, to represent upon this floor. I should have preferred it, and had I spoken at an earlier period of the debate, would have confined my remarks to a close, and, so far as I could make it so, a logical argument upon the points involved in this discussion; but at this period I must be pardoned if I follow the example which gentlemen have set before me, and stray occasionally to seek for matters of interest by the way-side.

And, in the first place, I say to the gentleman from Ohio, [Mr. BINGHAM,] who made the first long speech which was made on his side of the question, and who spoke with much fervor and eloquence, that his statements about the institution of slavery were as erroneous as the topic itself was out of place.

To speak of slavery as "the curse of Kehama, which smites the earth with barrenness, that crime which blights the human intellect, and blasts the human heart, and maddens the human brain, and crushes the human soul," may be good rhetoric, fine declamation, but it is very bad history, and worse fact.

When the gentleman tells me that slavery blasts the intellect of the slave, I want him to show me where the intellect of the African race is better, or even more cultivated in the enlarged sense of the word, than among the slaves of the southern States? Does it madden the human brain? Then he will perhaps compare for me the condition of the free African of the North with the slave African of the South, and show me how much more madness and idiocy there is among the latter than among the former. The statistics of the census show that it is greatly the other way.

Does it blast the human heart and crush the human soul? Then he will show me where, among the African race, there is more of happiness, more of Christianity, more of the sweet consolations and high hopes of religion, than among our servants. Until he can do this he ought not to deal in this empty declamation. I ask the gentleman to look to the facts upon the subject, and study them for the purpose of understanding the institution, rather than with a predetermination to condemn it.

Sir, what business had this subject of slavery and the slave-power in this debate? Can we not consider here a simple matter of assault and battery, without having the subject of slavery and the slave-power paraded before us as a mark for the arrows of attack. And this, too, bear in mind, by the same gentlemen who are constantly complaining of the aggressions of this slave-power. Why, sir, if a simple case of assault and battery to avenge a personal insult cannot be considered without an attack upon the slave-power, what spectacle will we not soon have? If Providence, in its wisdom, should again visit the earth with famine or pestilence—if he should send upon us drought, yellow fever, or cholera, we may expect to hear these gentlemen furiously proclaiming, "Here is another aggression of the slave power." In their imaginations everything is an aggression of the slave power.

I suppose, in some parts of the land, they scare their children into quiet with tales of the slave power; and that the matrons, and the maids, and the young men, and the old men, all dream dreams and see visions of horror connected with the same terrific slave power. Gentlemen doubtless suffer much; but the day of their tribulation is ended. Memorable day is yesterday likely to be in the annals of the country's history, as the day on which the gentleman from Massachusetts [Mr. COMINS] arose and proclaimed, "We tell you plainly, we will no longer submit to these things."

How, sir, with the deep sorrows of Jeremiah brooding upon his heart, did he cast his thoughts back to the pleasant associations which he had enjoyed, and then take leave of them forever! How, sir, with the rapt ecstatic hopes of Isaiah inspiring his soul, did he look forward to the glories which lie hid in the future! How heartily did he rejoice "that the American people have been awakened!" "Thank God," said he, "the Senators from Massachusetts have had the courage to place before the American people the true character of the slave power!" When the vail of Mokanna was lifted, the sight was too hideous to bear. The gentleman from Massachusetts has seen the slave power in its true colors, and yet lives! Indeed, like Jeshurun, he waxeth fat, and kicketh. Whatever it may be—substantial essence, or shadowy spirit—he fears it not. Ay, sir, the fiat has gone out; he will submit to it no longer. Then, sir, if gentlemen have come to that conclusion, let us consider the matter as settled, and hear no more about the slaveocracy, and the slave power.

Mr. Speaker, I shall now proceed to present some views which have suggested themselves to my mind, upon the constitutional and legal questions which have been raised in the course of this discussion. The leading facts of the case have not been disputed. I disagree with the gentleman from Georgia over the way, [Mr. FOSTER,] who last spoke upon this question, in one of the latter positions taken by him, that because the gentleman from South Carolina had been arraigned before the courts of justice, and his sentence had been pronounced, this House had therefore no right to take cognizance of the matter; that the gentleman from South Carolina had the right, in fact, to plead in bar of our proceedings, that he had been tried by a court of justice, and a fine had been adjudged against him.

If a gentleman rises here, in the presence of the House, and strikes down a brother member in his place, it would constitute a case of assault and battery, and as such the courts of the District would have the right to take cognizance of it. But it is not only a case of assault and battery, it is also a breach of the privileges of the House, into which the House may inquire. The act is one; the offense may be considered in a twofold aspect—not only as an offense against the laws of the District, but also against the privileges of the House.

I now come to inquire briefly whether there has been a violation of the privileges of the House or of the Senate committed, and if there has, whether we have the power to punish it? Now, sir, although the majority of the committee did idly let fall the assertion, that a breach of the privileges of the House had been committed, I can scarcely consider them to have been in earnest in the declaration. I can hardly imagine that a single member of the House will seriously say that an encroachment upon the rules or privileges of this House of Representatives has been committed. It seems to me that it is enough to propound the question, what privilege of this House, or of any member of it, received any let, bar, hindrance, or diminution from the act in question? What privilege had we, individually or collectively, before the said act, which we did not enjoy at the time, and have not enjoyed ever since? None, sir, none. The matter will not bear discussion for a moment. It is no violation of the privileges of this House.

I will now inquire briefly whether it is a violation of the privileges of the Senate, or of any member of the Senate? The privileges of the Senate and the House of Representatives are set forth in the Constitution of the United States in the same clause. They are twofold. The first is, privilege from arrest while attending on the sessions of either House—while coming to or going from the same. No man will contend that this attack amounted to an arrest; and, therefore, that part of the clause may be dismissed from further consideration. The other portion is:

"And for any speech or debate in either House they shall not be questioned in any other place."

Mr. Speaker, it has been contended, with great force and power, by the gentleman from Georgia, [Mr. COBB,] that this was intended to apply solely to legal responsibility, to questioning by legal process alone, and to provide merely that no man should be held legally responsible for words spoken in debate within parliamentary limits, in either House of Congress. I agree with that position. Was it not intended to confer by this clause of the Constitution some peculiar privilege on Senators and members of the House of Representatives? Is the privilege of freedom from assault and battery a peculiar privilege? By the common law, as it existed before the Constitution, and by the laws of every State, every citizen of the community had that privilege already. Why, then, in conferring peculiar privileges on Senators and members of the House of Representatives, need there be expressly conferred by the Constitution a privilege which they have already in common with every other citizen. Suppose, however, that for the better security of the personal rights of Senators and members it was intended to confer this privilege.

It stands on the same ground with the other privilege marked out by the gentleman from Georgia; it runs parallel with it, and ends with it. It is admitted by all—at least it has been stated very frequently, and not gainsayed—that this privilege, which is conferred by the British statute in very nearly the same words that it is by the Constitution, is there construed to extend no further than to words spoken.

The authorities on this subject, including the comparatively recent decision of Lord Ellenborough and Lord Denman, are well collated in a speech delivered on the floor of the Senate by a distinguished Senator from Virginia, [Mr. HUNTER.] If, in England, a man, under pretext of debate, utters, and then publishes and circulates, libelous matter, he becomes responsible in a court of justice. He can there be sued for libel,

and damages recovered. The legal exemption then ceases, and of course any peculiar personal exemption ceases with it.

Under this doctrine, if Mr. SUMNER's speech, as printed and circulated by himself, contained language which was in fact libelous, he became responsible in a court of justice. That exemption ceasing, all others resting on the same basis ceased with it.

As we have taken the language from the British statute, we may well refer to British construction as entitled to weight here. But I think that the American courts, adopting the spirit of our institutions, have gone further to restrain the abuse of privilege than the British courts have.

If I understand correctly the rule in America, it is this: The privilege was intended to protect members only in the legitimate discharge of their duty, and extends merely to speeches and debate legitimately arising in the course of parliamentary proceedings. If a man makes a pretext of parliamentary discussion, to wreak his malice on his personal enemy; if he pour out his wrath and vituperation "*contra morem parliamentarium*," he of course forfeits his privilege. Where malice begins, privilege ends. The straightforward road alone is protected. If a man departs from that, he steps out from his cover and exposes himself to danger. My limited time will not allow me to quote a multiplicity of authorities. Better few and to the point. The pith of Judge Story's teaching on the subject is contained in about a single line: "No man," says he, "ought to have a right to defame others, under color of the performance of the duties of his office."

Chancellor Kent states the law in England thus:

"That petitions to the King or to Parliament, or to the Secretary of War, for any redress of grievance, are privileged communications, and not actionable libels, provided the privilege is not abused. But if it appear that the communication was made maliciously, and without probable cause, the pretext under which it was made, aggravates the case."

The Supreme Court of the United States, in the case of White *vs.* Nichols *et al.*, (3 Howard,) says that, "by able judges of our own country, the law of libel has been expounded in perfect concurrence with the doctrine given by Chancellor Kent."

The same court, in the case referred to, says that they have examined the authorities which treat of the doctrine of slander and libel, particularly with reference to what have been styled "privileged communications," and they announce their opinion thus:

"Proof of express malice in *any* written publication, &c., will render that publication libelous in its character, and actionable, and will subject the author and publisher thereof to all the consequences of libel." "And we think that in every case of a proceeding like those just enumerated, falsehood and the absence of probable cause will amount to proof of malice."

The whole scope of the doctrine goes to show that he who pleads privilege must keep himself strictly within the line of duty.

What Mr. Jefferson says in his Manual is known to all. It is simply that the privilege of speech or debate in either House "is restrained to things done in the House in a parliamentary course." "For he (the member) is not to have privilege, *contra morem parliamentarium*, to exceed the bounds and limits of his place and duty." Such is this doctrine of "freedom of speech" in this country.

Thus far have I considered it as a question of law. I come now to investigate it as a question of right and justice. Because we happen to be members of Congress, will it be pretended that we are at liberty to rise in our places, and, with absolute impunity, abuse, malign, and slander each other, or any other person we may choose? The doctrine is absolutely monstrous. Nor is its meanness diminished by saying that a majority in framing their rules must properly restrict debate. We know too well that rules are often broken now-a-days. How many of the speeches delivered on this question have conformed to our rule, which requires the debate to relate strictly to the subject under consideration? Scarcely one.

Besides, the gentlemen of the North are largely in the majority on this floor. Sectional feeling runs high. It may be agreeable to them to abuse the southern members—their constituents, their institutions, their families, &c. Shall we be required to submit to it all, and be utterly without redress? Surely not; it is impossible. We have no such right, and could not enjoy it, if it were given. Say by express law, if you choose, that members of Congress shall enjoy perfect freedom of debate, and may abuse, and traduce, and malign whomsoever they choose. The right will be worth but little. There can be no royal prerogative of slander in this country. You may draw around it the strongest muniments of legal defense; you may make the sheriff and his *posse* the warders on the tower; you may make instruments of punishment to bristle on the walls, still the immunity will not be perfect. When it begins to throw its venom fiercely around, injured sensibility will revolt, and aroused manhood will still occasionally break over and inflict condign punishment. A broken head will still pay the penalty for a foul tongue.

Think, sir, of American character, how sensitive, yet how brave; how easily wounded, yet how quick to avenge the injury! Better death than disgrace! Can you, then, by legislation make American gentlemen submit to traduction with composure? Never! never, sir! You must first tame our high hearts, and teach them the low beat of servility; you must make our Anglo-Saxon blood run milk and water in our veins; you must tear from the records of history the pages which tell the deeds of our heroic ancestry, and persuade us that we have descended of drabs and shrews. When you have done that, and changed Billingsgate into rhetoric, and railing into eloquence, you may then convert the Senate and the House of Representatives into two great Schools for scandal, in which your Backbites and your Crabtrees may strut their "*hour*" on the stage and feel happy. Then, too, you may build up your great doctrine of woman's rights; for wherever your Backbites and your Crabtrees are the prominent actors, the Lady Sneerwells and Mrs. Candors should take their parts to make the play complete. If this is your doctrine, gentlemen, bring on your Theodore Parkers, and your Ward Beechers, and your strong-minded women, and have a good time of it here and in the Senate. *Gentlemen* will retire voluntarily from both without the process of expulsion.

Slander never can, (in this country,) under any guise, in any form of authority, enjoy perfect immunity, and have

"As large a charter as the wind,
To blow on whom it pleases."

Surely there has been no disposition or intention to give it such immunity or liberty heretofore; and any such construction is in the teeth of law and in the face of justice.

This, then, being the doctrine of law and justice, let me apply it to the case in hand.

I believe that Mr. SUMNER's speech was made "*contra morem parliamentarium;*" that under guise of debating the Kansas bill, he sought occasion to pour out his private resentments, and vent his personal malice. In thus stepping beyond his parliamentary right, he lost his constitutional protection, and became liable as any other citizen would be. The assault and battery committed on him occupies, in this regard, the same ground, not lower, not higher, than the same assault and battery upon any other person.

It has been asked, if Mr. SUMNER was liable to an action of libel, why not pursue him in the courts of justice? That question may as well be asked in any other case of assault and battery. If a man insults you in a public crowd, or traduces your wife or daughter, and you knock him down, it may be asked, why not sue him? That, surely, is the legal course. But there are offenses of such a nature, that men cannot always wait for redress on the slow and uncertain course of legal proceedings. The courts are then to inquire how much is to be pardoned to the weakness of human nature under the circumstances?

This is the great case of "the violation of the freedom of speech" in the person of Mr. SUMNER. He wantonly gave an insult, and was punished, rashly perhaps, for it. Why, then, Mr. Speaker, should Massachusetts become so much excited on the subject? Will she adopt the quarrels and take up the fights of her sons wherever they go? Freedom of speech is a right of the private man as well as of the public man. Whenever a son of hers gives an insult and gets a knock, is she to rush forth and cry out "that the freedom of speech has been violated?" I have known parents who identified themselves with their children in all their quarrels and broils with their schoolfellows and playmates; and the consequence in such cases always is, that the parent gets the more ill-will, and the children the more ill-treatment.

Massachusetts has sent a request to each member of this House to vote for the expulsion of a member, the gentleman from South Carolina. As she has made this polite request of me, I wish to give a kind reply. I am very apprehensive that she is in great danger of overtaxing herself. We have all seen that Massachusetts is at present engaged in the high vocation of fixing the destinies of an empire, as it were, lying west of the Mississippi. Here is the seat of her deadly fight with the "awful slave power." She is also engaged in the battle of "personal liberty," as she phrases it, against the Constitution of the United States. While thus engaged, if she should at the same time attempt to follow her citizens throughout the world, and protect them from assaults and batteries, she would have much to do—too much to do. Why need she do it, after the valiant speech of yesterday, made by one of her Representatives? Why need she regard such men as but chickens, and everybody else as hawks and kites, that upon every conflict she should jump out, and strut, and flap her wings, and croak, and scream? [Great laughter.] Valiant men like these can take care of themselves, nor need the shelter of the maternal wing. Let her trust them, and doubtless they will repay a mother's trust to the satisfaction of a mother's heart.

But I have been led too far from the strict line of the discussion. So much stress has been laid upon the alleged violation of Mr. SUMNER's "*freedom of speech;*" so much both of false doctrine and of bad feeling have been exhibited on that subject, that I have dwelt long upon that branch of the argument. I shall now hurry more rapidly onward.

I believe I have very fully exploded the claim of privilege arising under that clause of the Constitution which relates to freedom from arrest and freedom of debate.

The gentleman from Ohio [Mr. BINGHAM] rather incidentally alluded to another clause of the Constitution, as affording an immunity which has been violated in this case.

He says "we have all sworn to support that Constitution which declares that the person of the Senator and citizen alike shall be inviolate."

I suppose the gentleman had reference to article four of the amendments to the Constitution, which speaks of "the right of the people to be secure in their persons," &c. Now, sir, it is strange that so earnest and eloquent a gentleman should have taken so short-sighted a view of any constitutional provision upon which he hangs such grave comments. Read it, and what does it amount to? Nothing more than a provision against "unreasonable searches and seizures." It is a prohibition against what was known as "general warrants;" that is, warrants authorizing seizures and searches without a proper specification, duly verified on oath or affidavit, stating the existence of probable cause, and the person to be seized, or the place to be searched. Lawyers understand this very well. The clause has no reference whatever to "inviolability of person" against assaults and batteries. I respectfully submit, therefore, that the gentleman might very well have spared his allusions to the violated oath of the gentleman from South Carolina. I am aware that another class of privileges has been contended for.

It is held that the Senate and House of Representatives, by virtue of their existence as political bodies, enjoy the right of proceeding undisturbed, and of having the attendance of all their members. This source of privilege has been declared in the cases of Gunn and Baldwin, and of Houston and Stansbery, and perhaps others, in the House of Representatives. I have very little regard for congressional precedents at best. I know too well how inconsiderate and biased our action very often is. But precedents founded on a necessity that exists by our own fault ought to weigh nothing in constitutional construction. It is competent for the law-making power to provide ample protection for the two Houses of Congress. Its failure to discharge its duty can scarcely create a necessity which will be a just ground for the employment of powers not

granted by the Constitution itself. But if that doctrine be allowed, it must be conceded that the privileges of the two Houses arising from this source extend only so far as may be necessary for the purpose in view. If it be admitted that the withdrawal of a member from his duties in the Senate of the United States would be an invasion of the implied privilege of that body, still I say that the privilege of the Senate was only invaded to the extent that Mr. SUMNER was unable to attend upon his duties, and if he was safely able to attend the next day, then the privilege of the Senate was not invaded at all.

Thus, Mr. Speaker, it appears that, if any privilege of the Senate has been invaded, it is an implied one, and not one expressly given by any clause in the Constitution. But, sir, admitting that the privilege of the Senate has been invaded to the extent that one of its members was incapacitated from attending to his duties, then I inquire how far this House has control over the subject-matter so as to punish Mr. BROOKS; and I say that, in my judgment, it has none whatever. What are the powers of this House to punish its members? Those of the House and of the Senate are contained in one and the same clause of the Constitution. It is as follows:

"Each House may determine the rules of its proceeding, punish its members for disorderly behavior, and, with the concurrence of two thirds, expel a member."

Now, observe how those passages of that clause stand related. The phrase, "each House may determine the rules of its proceedings," and the phrase, "punish its members for disorderly behavior," are in immediate connection with each other. Each House may lay down its own rules, and then require its members to obey those rules. Disorderly behavior means behavior contrary to the rules of order; and the placing of them in this connection shows that exactly that idea was in the minds of those who framed that clause. Each House may punish its members for disobeying its rules. If you do not employ this limitation of the phrase, "disorderly behavior," what other can there be? Can you follow a member to the other end of the avenue to see whether he is guilty of insolence to the President? Can you follow him home to the bosom of his family, to ascertain how he treats his wife and children, and servants? If in the recess between the two sessions of Congress a member should think proper to visit foreign lands, can the eye of this House follow him there, and watch his behavior to the crowned heads, to the queens and the maids of honor? Will you go with us to our lodgings at night, and there take note of our uprisings and our downsittings, our outgoings and our incomings? Why, the idea is absurd. If the doctrine of gentlemen opposite is correct, then our power to punish is unlimited also, and for any little misbehavior the gentleman from Ohio, [Mr. CAMPBELL,] sitting as a grand inquisitor, may have you or me called to the bar, and have sentence of death pronounced upon us. According to the doctrine of these gentlemen, there is no limitation whatever. If you can punish to one extent, you can to another. You can follow a member anywhere, even, as I have said, across the water, watch, through your spies, his disorderly behavior to Queen Victoria, or any of her maids, and when he comes back, call him up before you, and pronounce sentence of death upon him. And that doctrine is to be proclaimed in the American Congress in this nineteenth century! We warn you against such a doctrine as this, so latitudinous, so uncertain, and so unconstitutional. Let us see what the Constitution of the United States says in one of the articles of the amendments:

"Nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb."

If for the same offense no man can be twice put in jeopardy of his life or limb, what does the doctrine of these gentlemen amount to? It amounts to this, that for a little misdemeanor, for which you could not be put in jeopardy by a court of justice, you can be sentenced to death by this House. But if it rises to a great offense, for which you may be tried before a court, and condemned to imprisonment or to death, then this House has no such power over you. The absurdity of such doctrine is palpable. Its enormity is revolting.

Mr. Speaker, the only reasonable construction of that clause of the Constitution under consideration, is that each House may punish its members for disorderly behavior committed in their capacity as members of the House against the rules of the House; and by such punishment as affects them peculiarly as members of the House, by the suspension of their privileges as members of the House, by reprimand or rebuke, or by something appropriate to the discipline of a body of this sort, and not rising to the height of expulsion, which is afterwards specially granted, but upon a condition annexed.

The clause goes on and says: "and may, with the concurrence of two thirds, expel a member." That comes in the same connection; and I should hold as an original question, that it belongs to the same great idea, that the House can punish a member for disorderly conduct as a member of the House, by appropriate punishments, and that in extreme cases, where two thirds unite, they may cut off an unruly member by expulsion. I must admit that precedent is the other way, however.

It was held by the Senate, in the cases of Blount and of John Smith, and perhaps others, that the power to expel members is not to be confined to offenses committed in the House, or as members of the House, or against the rules of the House, but may be exercised for disgraceful conduct committed anywhere during the term of service. This is the doctrine of the English authorities unquestionably. It is perfectly well settled, also, that the offense for which a member may be expelled must be one which reflects disgrace, and shows that the character of the man is corrupt.

Judge Story, in his Commentaries on the Constitution, speaks of it as a power given to reach a member who "might be so lost to all sense of dignity and duty, as to disgrace the House by the grossness of his conduct."

The Senate expelled one of its members (Mr. Blount) in 1797, for the reason that he attempted to bribe an Indian agent in the employment of the Government, from which it appeared that his character was *corrupt*.

The case of John Smith, a Senator from Ohio, whom it was proposed to expel from that body, because he had been indicted for high treason along with Aaron Burr, was referred to a com-

mittee, of which John Q. Adams was a member. Mr. Adams from that committee says, that "the high trust of legislation should be in *pure* hands," and placed himself upon the ground, that the right of expulsion was intended to preserve the *purity* of the National Legislature. All the cases in which it has heretofore been seriously proposed to exercise this right, were cases involving the *purity* and *integrity* of the member. That is the view of common sense. You should only expel a member whose character is such as to render him unfit longer to constitute one of the National Legislature.

I remember—though I do not like to refer to the incident—that at the former part of this session a gentleman over the way rose and stated that another member of the House had offered him a bribe to affect his vote. That, sir, was a charge affecting the purity of a member of the House. It is precisely the offense, viz. bribery, for which Blount was expelled from the Senate, and comes clearly within the scope of Mr. Adams's exposition. Yet the members of the House sat patiently and quietly under that thing. Nobody called for a committee to examine into it. It has slept soundly from that time to this. But here, in a case of mere assault and battery, gentlemen say it is a most heinous offense, and expulsion ought to be employed to punish the offender. Can any man persuade himself that an assault and battery renders the perpetrator impure, or affects the integrity of his action as a member of this House? I defy the production of any case of expulsion for assault and battery in the previous history of the House or of the Senate. Surely there is some bias or sinister purpose at the basis of this movement; something beyond a simple desire to do what duty requires.

This, sir, is the full extent of the power of this House to punish its members, so far as that power can be derived from the express grants of the Constitution.

Implied power to punish is claimed, however, as well as implied privileges. It is said that the privileges which result from the necessity of self-preservation would be worth nothing unless there was power in the Senate and House to punish the violation of them. Why could not such violations be punished by the courts or otherwise, as law might direct? Why vest such discretion in this House? Dangerous as this claim, sometimes put under the guise of punishing for contempt, appears, yet it is sustained by authority of great weight. Numerous cases have occurred in this House and the other, in which the doctrine appears to be recognized. I need not enumerate them.

But there is an authority on the subject stronger than any congressional precedent. It is the decision of the Supreme Court, as delivered by Mr. Justice Johnson in the case of Anderson *vs.* Dunn. In that case it is clearly held that each House may exercise the power necessary for *self-preservation*, but it is equally clearly laid down that the power to be employed must be the "least possible power adequate to the proposed end." From the ground upon which this power is rested by Mr. McDuffie and Chancellor Kent, as well as the Supreme Court, this limitation follows as a necessary consequence. Each House may exercise the power absolutely necessary for its own self-preservation. It cannot go further. One House cannot undertake by its own authority to protect the other. It may well be asked, who made us guardians and protectors of the Senate? If you take the power, you must take it with the limitations. If we do not, then what shall restrain us? Shall there be no bounds to our discretion, except our own will. Shall we construe the acts of our members into crimes, and visit them with punishment at our absolute discretion.

Implied powers, always odious, are most odious when they assume the form of implied power to punish for undefined and constructive offenses. Look, sir, at the efforts which have been made to secure certainty and precision in such matters.

It is provided in the Constitution, that no "*ex post facto* law shall be passed;" that no person shall "be deprived of life, liberty, or property, without due process of law;" and "that in all criminal prosecutions the accused shall enjoy the right to a speedy and public trial by an *impartial* jury."

But what avails all this if here a *prejudiced* tribunal may make crimes at their own discretion of acts already committed, and apply such punishment as their passions may dictate? Why maintain the doctrine that penal laws are to be strictly construed, that is, that where express power to punish is given, the letter of the law is not to be exceeded, when here there is no letter, and nothing but prejudice and passion to put bounds to authority? Why refuse to make each House the judge of its own privileges, as was done in the Federal convention, with full authority to punish their violation, when the same thing is now to be accomplished by implication. Why talk about law or liberty or rights, if we are at the absolute mercy of a majority of such a body as this? Have oppression and absolutism been driven out of our courts of justice to take refuge here? Has the Star Chamber court been crushed in England by the weight of public indignation to be erected again in the American House of Representatives?

Sir, this is a revolting doctrine. If it be true, we walk daily amid concealed traps and hidden snares. We hear the hiss of the viper, but we know not where he lurks; we see the gleam of the dagger, but know not when it will strike. The gentlemen on the other side are in the majority now, but their day may soon pass. If there be spirit in our people, it will soon pass. Let me say to them, in the language of Lord Strafford, when on trial for constructive treason: "Beware you do not awake these sleeping lions, by the searching out some neglected, moth-eaten records; they may one day tear you and your posterity in pieces." I think I may claim with confidence, that implied power to protect ourselves does not extend to the protection of the Senate. That body must take care of itself. Then how do we get jurisdiction of this case? We have jurisdiction of the person, but it is requisite that we should also have jurisdiction of the subject-matter. This we have not, because it was the Senate, and not this House, whose self-preservation was affected.

Now, sir, I wish to call the attention of the members of the House to the positions which I have taken. The only right of punishing its members which can be contended for as being in the House of Representatives is, first, for disor-

derly behavior; and that applies only to disorderly behavior in the House, or as members of the House. Then there is the power, by a two-thirds vote, to expel a member; but this is to be exercised for offenses which affect the purity and integrity of the member. Then there is the right of self-preservation, by which we may exercise only the least possible power adequate to the end. Now, by virtue of which of these rights may we expel Mr. BROOKS? Has he been guilty of disorder in the House, or in his character as a member of the House? Has he done an act affecting his purity or integrity of character? Has he interfered with the safety of this House? He has done neither.

Now, sir, again: what right have you under either of these claims of power to censure any member for disorderly conduct, not committed in this House, nor in his capacity as a member of the House? You cannot show it. It is not under that clause which says that each House may punish members for disorderly behavior. It is not under the expulsion clause. It is not under that power given by the decision of the Supreme Court, that this House may protect its own existence. Where do you get the power, then, to censure my colleague, [Mr. EDMUNDSON,] or the other gentleman from South Carolina, [Mr. KEITT?] It is an usurpation.

Now, Mr. Speaker, I come to say one word in reference to the point of this case in which I am most particularly interested. I desired to speak on this subject because it involves great questions of constitutional right and constitutional privileges, and especially because unjustly, if you look to the facts, and unjustly and improperly, if you look to the Constitution and to the rights of the House, you are seeking to involve a colleague of my own and one of my most valued friends. I ask how is it that they have brought in the gentleman from Virginia for censure in regard to his course in this transaction? What has he done that an honorable man ought not to have done? When the gentleman from South Carolina met him and told him in confidence what were his views and purposes in reference to Senator SUMNER, did the gentleman from Virginia persuade him to make the attack? Did he suggest to him motives for carrying out such a course? No such fact appears in the case. Was it his duty, under the circumstances, to have violated the confidence reposed in him, and to have given public information of what he had heard? It would be the first time he ever betrayed a friend. Will this House forbid confidence between its members, and require a man to whom information has been thus communicated, to turn public informer against his friend? If this be its requirement, then HENRY A. EDMUNDSON is incapable, by nature and raising, of loyal submission; if this is to be the line of honorable, high-minded conduct which this House is to impose upon its members, then, sir, I want no part or fellowship in their councils or their fame. I want to be one of those who are to be proscribed and punished.

But, sir, I wish to say that the gentleman from South Carolina did not inform the gentleman from Virginia of his intention to make an attack. He informed him that he was going to call upon the Senator from Massachusetts, and demand an explanation for language published in his speech. My colleague had good reason to suppose that the explanation would be given. That is, he had the conviction that it ought to be given, and therefore he had reason to expect that it would be, and he had the assurance to that extent that no assault would be made.

And, sir, how was the information upon which the majority of the committee propose to censure the gentleman from Virgina derived? From his own statement, made before the committee, without any knowledge, on his part, that he was on trial.

Notwithstanding the acknowledged maxim of law or constitutional provision, that no man shall be compelled, in a criminal case, to testify against himself, it is now proposed to punish my colleague upon no evidence except his own, called for by the committee. Sir, the heart of the gentleman from Ohio [Mr. CAMPBELL] could not have beat with its usual generous impulses, when he agreed to that resolution. I cannot believe that he acted upon the impulses of his own feelings, or upon his calm, unbiased judgment. It may have been done in an unguarded moment; or it may be that his mind was operated on by some other influence. There are some facts bearing on this point which should be recollected.

There are certain newspapers in the northern section of this Union which, in my humble judgment, seek to fan the flames of civil war between the two sections of this great Confederacy—not that they wish to take part in the danger—not they; they are peace men, I believe. They wish the war for the same reason that a burglar burns a house—that is, for plunder; they want political plunder. These newspapers declared, at the time the affair happened, that there had been a conspiracy on the part of southern men to assail Senator SUMNER. The idea of a conspiracy would, it was thought, increase northern irritation. And it will be recollected that the next day after the occurrence, the gentleman from Ohio introduced into this House a resolution with a preamble declaring that an assault had been committed upon Senator SUMNER by the gentleman from South Carolina and "*other members*," carrying out the same idea of a conspiracy. When the examination was made, there appeared nothing in the conduct of my colleague to condemn; but it was necessary to carry out the idea of a conspiracy, and therefore he must be censured.

But, sir, the gentleman upon whom this censure is sought to be cast may well look with scorn upon your impotent malice. This House cannot hurt him. In the State in which he and I have cast our lots, or in which they were cast by nature, I tell you that many generous hearts beat with admiration and love for him. His friends—and their name is legion—stand ready to sustain him against your threatened injustice. You seek to tarnish his escutcheon—many friendly hands are already stretched out to wipe off the stain. You seek to inflict upon him a wound—thousands of warm hearts are gathering round him to pour in the balm of sympathy. You seek to crush such a man—you do but build him up. He is known here, and everywhere, as a man whose merits are only equaled by his modesty. Though he has sat silently here, session after session, and permitted the honors of debate, and even of leadership, to be borne off by his

inferiors, he is known to be a man of high gifts. And for noble generosity, for high magnanimity, for chivalrous courage, for all the qualities that constitute the man and the gentleman, I will not say that he has not equals, but I will say that he has no superiors. I feel that I have pronounced the judgment of this House, and of this country, and all your censu[illegible] sir. If under such [illegible] pretext, and with such color of authority, this House shall pass a censure upon HENRY A. EDMUNDSON, it will but bring its own action into ridicule, and its own authority into contempt.

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